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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. 616

G. S. SINCLAIR, *et al.*,

Petitioners,

vs.

STATE OF CALIFORNIA, *et al.*,

Respondents.

Respondents' Brief in Opposition to Petition for a Writ of Certiorari.

To the Honorable Supreme Court of the United States:

The respondents respectfully pray that a Writ of Certiorari requested by petitioners in the above-entitled case not issue.

Introduction.

This case deals with a resolution selecting and adopting a route for a proposed freeway in a portion of San Diego County, California.

On June 11, 1946, the State of California commenced a study of the area between San Diego and Carlsbad, California, for the purpose of determining whether U.S. 101 (California Legislative Route 2; California

Streets and Highways Code, Sec. 302(a)) should be relocated and improved to freeway standards. Since that time, over 38 public meetings and official hearings were held considering the routing and type of highway to be developed. On July 24, 1957, the route was selected and adopted. [Clk. Tr. p. 4, lines 17-22.] Following the route adoption and before the complaint was filed, more than 7 additional meetings and hearings were held in connection with the route as located, selected and adopted.

On March 13, 1959, a complaint was filed seeking to challenge the route as located, selected, and adopted by the California Highway Commission. [Clk. Tr. p. 1.] Demurrers were interposed by respondents. [Clk. Tr. p. 50 *et seq.*] As evidenced by the Clerk's Transcript, the cause was amply briefed so that the Superior Court of the State of California, in and for the County of San Diego, had before it all the applicable law. The arguments and hearing consumed one judicial day of time. During the hearing, the Honorable Charles A. Paulsen, Judge Presiding, inquired of petitioners' counsel and received the reply that all the matters which petitioners could plead had been incorporated. The demurrers to the complaint were sustained without leave to amend. [Clk. Tr. p. 134.] A motion to dismiss was granted. [Clk. Tr. p. 134.]

An appeal was taken by petitioners to the California District Court of Appeal, Fourth Appellate District. On July 28, 1961, the District Court affirmed the judg-

ment and the order. The written opinion of the Court is reported in Advance California Appellate Reports, Volume 22, Number 34, Pamphlet No. 3, and cited as *Sinclair v. State of California* (1961), 194 A. C. A. 415. (Pet. for Writ of Certiorari, Appendix A.)

A petition for hearing after decision by the District Court of Appeal was denied by the Supreme Court of the State of California September 20, 1961. None of the Justices were of the opinion a hearing should be granted.

The Petition for a Writ of Certiorari is sought for the purpose of reviewing the judicial determinations of the San Diego Superior Court, the Fourth District Court of Appeal and the California Supreme Court.

As developed in oral arguments, both in the San Diego Superior Court and the Fourth District Court of Appeal, the real issue sought to be raised is whether the highway should be constructed in the location where the California Highway Commission determined it should be located or somewhere else, *i.e.:* along the "Green Valley Route" proposed by plaintiffs.

In any event, there is no question but that the proposed freeway is for a legitimate public use.

I.
Reasons for Not Granting Petition.

The California courts have decided no federal question of substance which had not been theretofore determined by the United States Supreme Court.

A. A State Highway Is a Public Use.

It has been universally recognized from time immemorial that a highway is a legitimate public use.

Rindge Co. v. Los Angeles County (1923), 262 U. S. 700, 706, 67 L. Ed. 1186, 1192.

People v. Chevalier (1959), 52 Cal. 2d 299, 304, 340 P. 2d 598.

A freeway is a highway. California Streets and Highways Code, Sections 23 and 23.5.

This Court has held that while enforcing the Fourteenth Amendment to the United States Constitution it should keep in view and regard with great respect the judgments of state courts upon what should be deemed public uses in any state.

Rindge Co. v. Los Angeles County (1923), 262 U. S. 700, 705, 706.

B. Questions as to the Location of Highways Are Purely Legislative and Political, Outside the Scope of Judicial Inquiry.

The questions of whether or not to make a given public improvement, what plan should be used and the location of that improvement are purely political, do not require a hearing, and are not the subject of judicial inquiry.

Rindge Co. v. Los Angeles County (1923), 262 U. S. 700, 709, 67 L. Ed. 1186, 1193;

Oklahoma v. Atkinson Co. (1941), 313 U. S. 508, 527, 528, 85 L. Ed. 1487, 1501;

Arizona v. California (1931), 283 U. S. 423, 456;

Joslin Mfg. Co. v. Providence (1923), 262 U. S. 668, 678, 679, 67 L. Ed. 1167, 1175, 1176;

Adirondack Ry. Co. v. New York State (1900), 176 U. S. 335, 349, 44 L. Ed. 492, 499;

United States v. Gettysburg Elec. Ry. Co. (1896), 160 U. S. 668, 685, 40 L. Ed. 576, 582;

Shoemaker v. United States (1893), 147 U. S. 282, 298, 37 L. Ed. 170, 184;

Mississippi & Rum River Boom Co. v. Patterson (1878), 98 U. S. 403, 406, 25 L. Ed. 206, 207.

People v. Chevalier (1959), 52 Cal. 2d 299, 307, 340 P. 2d 598.

Where the intended use is public, the legislative decisions concerning the questions of the necessity or expediency for making a public improvement, its type or its location do not require a hearing thereon, and a hearing is not essential to due process in the sense of the Fourteenth Amendment.

Rindge Co. v. Los Angeles County (1923), 262 U. S. 700, 709; 67 L. Ed. 1186, 1193;

Bragg v. Weaver (1919), 251 U. S. 57, 58, 64 L. Ed. 135, 136;

Oklahoma v. Atkinson Co. (1941), 313 U. S. 508, 527, 85 L. Ed. 1487, 1501;

Adirondack Ry. Co. v. New York State (1900), 176 U. S. 335, 44 L. Ed. 492.

People v. Chevalier (1959), 52 Cal. 2d 299, 307, 340 P. 2d 598.

Whether a particular plan is feasible is not a proper matter for the courts to determine.

Oklahoma v. Atkinson Co. (1941), 313 U. S. 508, 528;

Ashwander v. T. V. A. (1935), 297 U. S. 288, 329;

Arizona v. California (1931), 283 U. S. 423, 456.

People v. Chevalier (1959), 52 Cal. 2d 299, 307, 340 P. 2d 598.

Courts do not exercise legislative judgment.

Oklahoma v. Atkinson Co. (1941), 313 U. S. 508, 527;

Hayburn's Case (1792), 2 Dallas 409, footnote at p. 410—at least not when sitting as judges.

People v. Chevalier (1959), 52 Cal. 2d 299, 307, 340 P. 2d 598.

The location of a particular public improvement is a matter of legislative discretion.

Oklahoma v. Atkinson Co. (1941), 313 U. S. 508, 528;

Adirondack Ry. Co. v. New York State (1900), 176 U. S. 335, 349;

Shoemaker v. U. S. (1893), 147 U. S. 282, 298.

People v. Chevalier (1959), 52 Cal. 2d 299, 307, 340 P. 2d 598.

Even the motives of those voting for the project are not subject to judicial inquiry.

Oklahoma v. Atkinson Co. (1941), 313 U. S. 508, 528;

Arizona v. California (1931), 283 U. S. 423, 455;

Rindge Co. v. Los Angeles County (1923), 262 U. S. 700.

People v. Chevalier (1959), 52 Cal. 2d 299, 307, 340 P. 2d 598.

A statute which fails to provide a landowner with a hearing before a legislative determination is made regarding the necessity for the public improvement or its location does not conflict with the 14th Amendment.

Rindge Co. v. Los Angeles County (1923), 262 U. S. 700, 709;

Adirondack Ry. Co. v. New York State (1900), 176 U. S. 335, 349.

A statute declaring a resolution finding upon the purely legislative and political questions of the type of a particular public improvement, and where it shall be located, does not deprive an owner of his property in violation of the 14th Amendment.

Rindge Co. v. Los Angeles County (1923), 262 U. S. 700, 710.

The filing of a proposed route map establishes no right against the owners of land along the route.

Adirondack Ry. Co. v. New York State (1900), 176 U. S. 335, 346.

No private property rights are acquired by the adoption of a California State highway route. Neither are any private property rights acquired by the declaration of a State highway route a freeway.

California Streets and Highways Code, Sec. 100.3.

This Court cannot assume that just compensation will not be paid for property required to be taken for public use.

Joslin Mfg. Co. v. Providence (1923), 262 U. S. 668, 674;

Oklahoma v. Atkinson Co. (1941), 313 U. S. 508.

Even possible adverse effects on local tax revenues as a result of the construction of a public improvement in the manner proposed does not prevent the exercise of the power of eminent domain to accomplish the project.

Oklahoma v. Atkinson Co. (1941), 313 U. S. 508, 534.

C. The "Due Process" Clause of the United States Constitution Does Not Require a Hearing Preliminary to the Selection of a Highway Route.

The California courts have correctly held that the due process clause of the United States Constitution does not require either a hearing preliminary to the selection of a highway route, nor a judicial review of the decison making the selection of the route.

The only issue sought to be reviewed is the location of the freeway.

An owner of property along a proposed highway route is not entitled to a hearing as to whether or not he agrees with the choice of the route or, whether he could suggest another route for the highway. Judicial refusal to consider the owner's contentions as to what constitutes the "best route" is proper.

Rindge Co. v. Los Angeles County (1923), 262 U. S. 700, 709;

People v. Chevalier (1959), 52 Cal. 2d 299, 303, 304, 307, 340 P. 2d 598;

Sherman v. Buick (1867), 32 Cal. 241, 252, 253;

Wulzen v. Board of Supervisors (1894), 101 Cal. 15, 21, 35 Pac. 353;

County of Siskiyou v. Gamlich (1895), 110 Cal. 94, 98, 42 Pac. 468;

County of San Mateo v. Coburn (1900), 130 Cal. 631, 634, 635, 63 Pac. 78, 63 Pac. 621;

Nickerson v. San Bernardino (1918), 179 Cal. 518, 522, 523, 177 Pac. 465;

County of L. A. v. Rindge Co. (1921), 53 Cal. App. 166, 172-174, 200 Pac. 27.

The more than forty-five hearings which have been held since June 11, 1946, were purely matters of legislative grace and were not required by the 14th Amendment to the United States Constitution.

Bi-Metallic Co. v. Colorado (1915), 239 U. S. 441, 445;

Rindge Co. v. Los Angeles County (1923), 262 U. S. 700, 709;

People v. Chevalier (1959), 52 Cal. 2d 299, 307, 340 P. 2d 598;

12 *Am. Jur.*, Sec. 618, p. 310;

Ray v. Parker (1940), 15 Cal. 2d 275, 296, 297, 101 P. 2d 665;

Franchise Tax Board v. Superior Court (1950), 36 Cal. 2d 538, 549, 225 P. 2d 905.

The true controversy in this proceeding is the petitioners' complaint that the California Highway Commission "chose the wrong route".

There is no contention in this case that the route adopted is located outside the confines of California Streets and Highways Code Section 302(a).

The delegation of authority to select routes, from the legislature to the California Highway Commission has been upheld by the California Supreme Court.

Holloway v. Purcell, 35 Cal. 2d 220, 217 P. 2d 665.

Constitutional "due process" is satisfied upon a showing that the use to be made of the public improvement proposed is a "public use" and that "just compensation" be made for property required to accomplish the improvement.

Petitioners have never contended (and, indeed cannot contend) that hearings were not held in this route adoption matter. They have only contended that the "wrong route" was adopted. The California courts have properly held that no justiciable issue is raised by petitioners' pleadings—*Sinclair v. State of California* (1961), 194 A. C. A. 415, 425, 426.

II.

Fourteenth Amendment of the United States Constitution Is Not an Issue in This Proceeding.

The second sentence of Section 1 of Amendment XIV states:

> ". . . nor shall any State deprive any person of life, liberty, or property, without due process of law; . . ."

As of this date, insofar as petitioners are concerned, the only State action taken is to have made a legislative determination to make a public improvement and to have located where the public improvement shall be constructed.

No life of any petitioner has been endangered. No petitioner's liberty has been circumscribed. Petitioners' property or properties have not been acquired.

How can the 14th Amendment be violated when no person's life, liberty, or property has been deprived? Speaking for this Court in *Bi-Metallic Co. v. Colorado* (1915), 239 U. S. 441, Mr. Justice Holmes said at page 445:

> "It appears to us that to put the question is to answer it. There must be a limit to individual arguments if government is to go on."

Applied in California in *Franchise Tax Board v. Superior Court* (1950), 36 Cal. 2d 538, 549, 225 P. 2d 905.

Accord:

Ray v. Parker (1940), 15 Cal. 2d 275, 296, 297, 101 P. 2d 665.

Conclusion.

Each point sought to be raised by petitioners in the Superior Court of San Diego County, in the District Court of Appeal, and in the California Supreme Court has been clearly stated and completely answered by the decision of the California District Court of Appeal, Fourth Appellate District.

Each of the questions of law sought to be presented in the Petition for Writ of Certiorari have previously been determined by the United States Supreme Court and the reported decision of *Sinclair v. State of California* (1961), 194 A. C. A. 415 is clearly in accord with the applicable decisions of the United States Supreme Court.

Respondents, therefore, respectfully request that the Petition for a Writ of Certiorari be denied.

Respectfully submitted,

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